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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/584,215	07/24/2006	Martin Mastenbrock	2005-1037	9728
466 7590 07/21/2010 YOUNG & THOMPSON 209 Madison Street Suite 500 Alexandria, VA 22314			EXAMINER QUINN, COLLEEN M	
			ART UNIT 3634	PAPER NUMBER
			NOTIFICATION DATE 07/21/2010	DELIVERY MODE ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

DocketingDept@young-thompson.com

Office Action Summary

Application No.

10/584,215

Applicant(s)

MASTENBROEK, MARTIN

Examiner

COLLEEN M. QUINN

Art Unit

3634

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 August 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 38-57 is/are pending in the application.
- 4a) Of the above claim(s) 44 and 52-57 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 38-43 and 45-51 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB-08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

Election/Restrictions

Applicant's election without traverse of Species A, Figures 1-7, 10 and 11 in the reply filed on August 31st, 2009 is acknowledged. All previous claims were cancelled in the response of August 31st, 2009 and new claims 38-57 were presented. However, at the time of the Election of Species Requirement, the claims contained only apparatus claims, and in the response to the election requirement by the applicant presented both apparatus claims (38-54) and method claims (55-57). Newly submitted method claims 55-57 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: The method of providing an object with a safety device (claims 55-57) could be used for a materially different safety device than that of claims 38-54 which requires fastening means, the means comprising more than just the provided fastening flap as claimed in the method.

Since applicant has already received one Election/Restriction Requirement for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 55-57 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Additionally, of the apparatus claims (38-54), claims 44 and 52-54 are withdrawn for being directed to a non-elected species.

Claims 38-43, and 45-51, directed to the apparatus of Species A, figures 1-7, 10 and 11, have been examined for this Office Action.

Information Disclosure Statement

The information disclosure statement filed 6/23/06 fails to comply with 37 CFR 1.98(a)(2), which requires a legible copy of each cited foreign patent document; each non-patent literature publication or that portion which caused it to be listed; and all other information or that portion which caused it to be listed. It has been placed in the application file, but the information referred to therein has not been considered.

Claim Objections

Claim 45 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Claim 45 claims a safety device according to claim 38 and comprising all the claimed elements of claim 38, which is already claimed in claim 38. Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 45, 46, 47-51 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The claim language "unremovably pre-assembled" is indefinite and renders the claim unclear. What is unremovably? Are nails

and screws to be considered “unremovable” even though nails and screws can be taken out; soldering and other bonds can be broken as well. And pre-assembled with respect to what? Shipping the device to a user? Installation on the roof? Before attachment to a safety device or use? Additionally, as noted and explained in the rejection below, this claim language also renders the claim a Product by Process claim. (see MPEP 2113).

With respect to claim 47-51, what defines ‘flange-shaped’? Examiner is aware of round, square, and rectangular flanges, as well as numerous other possibilities.

With respect to claim 45, it depends from claim 38 which requires an object and a safety means secured to an exposed surface of said object—thus the object is required and the safety device is positively recited as secured to the object's surface. Claim 45 appears to be a broader recitation of the object “to be applied on the object according to claim 38” but this is not clear—the device is already secured, not to be secured.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 38, 39, 41-43 and 45-48 are rejected under 35 U.S.C. 102(b) as being anticipated by Stearns et al. (US Pub. 2002/0066235) as best understood in light of the above rejections. Stearns et al. teach an object (building), comprising an exposed surface (roof 60) which is provided with a safety device (figures 14 & 15) capable of

securing a personal fall protection, directly or indirectly, said safety device comprises anchoring means (124, 126) with an anchoring member (128) capable of securing said personal fall protection, and said safety device is secured to said surface by means of fastening means (figures 14 & 15), said fastening means comprise a flexible fastening flap (130) which extends laterally on either side of and with respect to said anchoring means (figures 14 & 15), and said flexible fastening flap is locally bonded (page 3, [0048]) to said exposed surface of said object to render a firm and durable connection (page 3, [0048]); wherein said exposed surface is provided with a flexible wall-covering material (122) , and said flap likewise comprises a flexible wall- covering material (130); wherein said anchoring means comprise a substantially rigid, substantially flat body (124, 126) being provided with said anchoring member (figures 14 & 15), and said flap extends laterally from said body, adhering to said surface (figure 15); the flat rigid body comprising a flange shaped member (124) which is connected to another flange shaped member (126) while enclosing the flap (figures 14 & 15); wherein said anchoring member is a fixing eyelet/ cable guide (figures 14 & 15); and wherein the flange shaped members are provided with attachment members (134, 136, 140) which extend into the flap (figure 14). Regarding claim 46, the recitation that the rigid body is unremovably preassembled with the flexible fastening flap is a Product by Process claim and has been treated accordingly. MPEP 2113 explains that in a product claim it is the end product that is looked at, and not the process at how one arrives at the end product. In the instant case, the substantially rigid body is unremovably pre-assembled to the

fastening flap prior to its use by a user as a safety device/fall arrest system attachment point, noting examiner's concern with the word "unremovably" above.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 40 is rejected under 35 U.S.C. 103(a) as being unpatentable over Stearns et al. alone. Regarding claim 40 and the claim that the wall covering material comprises bituminous material, the examiner takes Official Notice that one of ordinary skill in the art would understand that, although Stearns et al. does not spell it out, a wall covering material such as the roof shingles of Stearns et al. and/or equivalents (tar paper, roof felt etc.) would comprise a bituminous material since it is well known in the art that shingles are made of coverings soaked in or comprising bitumen.

Therefore, it would have been obvious to one of ordinary skill in the art to use a wall covering material, such as the shingles of Stearns et al., comprising bituminous material since well known and readily available waterproofing roof covering materials are known to comprise bituminous material.

Claim 49 is rejected under 35 U.S.C. 103(a) as being unpatentable over Stearns et al. as applied to claims 38, 39, 41-43 and 45-48 above, and further in view of Woodyard (US 5,287,944). Stearns et al. fail to disclose the substantially flange shaped members to be nestable and cup shaped.

However, Woodyard teaches a safety device (10; figure 2) for securing of a personal fall arrest system (figures 1-3) either directly or indirectly (figures 1-3), the device comprising an anchoring means (48, 108) with an anchoring member (60) comprising an eyelet /cable guide (32; figures 1-3); the device locally secured to the surface (18) of an object (figures 1-3) and the anchoring means comprising nesting cup shaped flange members (48, 102), both of which are secured to the roof surface (col. 8, lines 20-51 & figure 8), providing a well sealed and very secured safety device for securing a personal fall protection system that is adaptable of being fitted over roof ridges and/or elevated surfaces.

Therefore, it would have been obvious to one of ordinary skill in the art to provide the device of sterns with nestable cup shaped flange members as taught by Woodyard in order to provide a device capable of fitting over roof ridges and/or elevated surfaces, making a more adaptable and versatile safety device.

Claim 50 is rejected under 35 U.S.C. 103(a) as being unpatentable over Stearns et al. and Woodyard as applied to claim 49 above, and further in view of Poldmaa (WO 02/14625). Sterns et al. do not disclose the flange members to have a centrally connecting screw bolt with the anchor member connected thereto.

However, Poldmaa teaches a roof anchor (10; figures 1 & 8) comprising an anchoring means (12, 14, 16) comprising an anchor member (12) and laterally extending cup shaped flexible flange (34) securable to an object surface (figures 4 & 8); wherein the flange has a centrally located screw bolt (14, 16) and nut (18, 20) connection (figures 1 & 8) and the anchor member is connected to the free end of the bolt (figures 1 & 8), providing an anchor member that also serves to further secure the flange to the object surface.

Therefore, it would have been obvious to one of ordinary skill in the art to provide the device of Stearns et al. with an anchoring member atop a screw bolt that passes through the flap and is secured by a but connection as taught by Poldmaa in order to provide additional security in the device to surface connection without disrupting the central location of the anchor member.

Claim 51 is rejected under 35 U.S.C. 103(a) as being unpatentable over Stearns et al., Woodyard and Poldmaa as applied to claim 50 above, and further in view of Carroll (US Pub. 2002/0100244). None of the above reference teach the anchor member to be detachable from its extending bolt/body portion.

However, Carroll teaches a safety anchor for attachment to a roof surface (figure 1) comprising anchoring means which further comprise flanged bodies (126, 106, 108) attachable to the roof surface (102) and an anchor member (110) comprising a detachable eyelet (118) atop a screw bolt (104) having a securing end (112) that passes

through and extends below the flanged bodies and a free end opposite the securing end (figure 1) the anchoring eyelet being detachably connected (122, 124) to that end of the screw bolt, for receiving a personal fall protection system (116, 114 ; figure 1).

Therefore, it would have been obvious to one of ordinary skill in the art to provide the device of Stearns with a detachable anchoring eyelet portion as taught by Carroll in order to provide a device have parts that can be replaced individually as needed, or removed and replaced with more appropriately sized eyelets/cable guides if need be.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to COLLEEN M. QUINN whose telephone number is (571)272-6289. The examiner can normally be reached on 8:30AM-5:00PM Monday - Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Katherine Mitchell can be reached on (571) 272-7069. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR.

Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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